

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN APRIL 27, 2010**

Daniels v. State, No. 2009-KA-00692-COA (Miss.App. April 27, 2010)

CRIME: Armed Robbery

SENTENCE: 25 years with 5 years suspended and 5 years on probation

COURT: Montgomery County Circuit Court

TRIAL JUDGE: Hon. C.E. Morgan, III

APPELLANT ATTORNEY: Dan Hinchcliff, H. Lee Bailey, Jr.

APPELLEE ATTORNEY: LaDonna C. Holland

DISTRICT ATTORNEY: Doug Evans

DISPOSITION: Affirmed

Maxwell, J., for the Court: Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Roberts, JJ., Concur. King, C.J., Concurs in Result Only.

ISSUE: That the State used its peremptory challenges in a discriminatory manner to remove females and African Americans from the venire.

FACTS: On the night of July 28, 2008, four people attempted to rob the Campbell Hill Grocery in Winona. The robbers were not identified because they wore masks. The following day, Trevarus Cijuan Daniels told his mother that he had done something "stupid" and admitted to her that he had attempted to rob the store. Daniels was later charged with armed robbery. At trial, Daniels testified he had falsely implicated himself in the robbery, and his statement to police had been fabricated. Specifically, he alleged the chief of police had told him what to say. After deliberating for forty minutes, the jury found Daniels guilty of armed robbery.

HELD: Since no objections were made at trial, Daniels's *Batson* claims are waived. A trial judge can not invoke *Batson* on his own initiative. Furthermore, the record does not reflect plain error. The State's peremptory strikes were uncontested. The final jury consisted of 2 black males, 3 white males, 2 black females, and 5 white females.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62016.pdf>

Adams v. State, No. 2008-KA-01615-COA (Miss.App. April 27, 2010)

CRIME: Aggravated Assault

SENTENCE: 17 years

COURT: Covington County Circuit Court

TRIAL JUDGE: Hon. Robert Evans

APPELLANT ATTORNEY: John Hubert Anderson

APPELLEE ATTORNEY: Lisa Blount

DISTRICT ATTORNEY: Eddie H. Bowen

DISPOSITION: Affirmed

Roberts, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Maxwell, JJ., Concur.

ISSUE: Whether the trial court erred in overruling Adams's motion for a directed verdict due to insufficient evidence to prove an essential element of the crime.

FACTS: On November 11, 2006, Police responded to a call at Dorothy Fairly's apartment and found a woman screaming. Derrick Lockett was found lying on the floor, bleeding from a gunshot wound. Police began looking for Anthony Adams, Fairly's former boyfriend, but he was not located for 16 days. Lockett testified he met Fairly a week before the shooting. On the 11th, Lockett went to Collins, at the request of Fairly and her sister, and attended a party with Fairly. After the party, they returned to Fairly's apartment. It was approximately 2:30 a.m. or 3:00 a.m. when Lockett heard two "big booms." Adams ran through the door and began to pistol whip Lockett. During the struggle, Lockett was pushed back on the bed and shot. The gun then jammed and Adams fled. Lockett testified that he did not have a gun on the night he was shot. Lockett incurred serious injuries, undergoing several surgeries. Adams claimed he was living at the apartment with Fairly and his 2 month old daughter. However, Adams later testified that he was living with his mother; but he still had a key to Fairly's apartment, which he used to gain access to the apartment that night. He claimed he saw Lockett with a gun and thought he was an intruder. They struggled for the gun and after it went off, Adams fled back to his mother's house.

HELD: Adams contends he merely tried to pistol whip Lockett, not shoot him. He argues the State failed to prove that he knowingly and purposefully caused bodily injury to Lockett. However, there is no specific intent requirement for aggravated assault. The evidence shows that Adams shot Lockett after a tussle over the gun. Regardless of whether Adams was attempting to pistol whip or shoot Lockett, there was sufficient evidence to show that Adams knowingly and purposely caused bodily injury to Lockett by using a deadly weapon.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62583.pdf>

Thompson v. State, No. 2008-KA-01946-COA (Miss.App. April 27, 2010)

CRIME: Count I: Possession of between 500 grams and 1 kilogram of marijuana with intent to distribute within 1,500 feet of a church; Count II: Possession of between 10 and 30 grams of cocaine with intent to distribute within 1,500 feet of a church.

SENTENCE: Count I: 20 years with 5 years suspended with 5 years PRS; Count II: 15 years with 5 suspended and 5 years PRS, to run consecutively to Count I

COURT: Pike County Circuit Court

TRIAL JUDGE: Hon. David H. Strong, Jr.

APPELLANT ATTORNEY: Joseph A. Fernald, Jr.
APPELLEE ATTORNEY: Stephanie Breland Wood
DISTRICT ATTORNEY: Dee Bates

DISPOSITION: Affirmed

Roberts, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Maxwell, JJ., Concur.

ISSUES: (1) he did not make a valid, intelligent, and knowing waiver of his right to counsel; (2) the circuit court allowed the prosecution to elicit inadmissible hearsay; (3) the circuit court infringed upon his rights to call and confront a necessary witness; and (4) the verdict is contrary to the overwhelming weight of the evidence.

FACTS: David Bernard Thompson's convictions originated from a controlled buy arranged by the McComb PD. Prior to the buy, officers searched the CI and his vehicle. The CI was given \$250. The CI told officers that he could buy drugs from someone he identified as "Head." The CI then went and purchased drugs at 1119 Nelson Avenue. The events of the buy were captured on audio and video. Officers then obtained a warrant to search the house. That house turned out to be Thompson's residence. Authorities seized approximately 105 grams of marijuana in the stove; approximately 408 grams of marijuana, small sandwich bags, and a "finger scale" in the closet of the master bedroom; approximately 456 grams of marijuana in Thompson's clothing; approximately 20 grams of crack cocaine in the freezer/refrigerator; and \$2,000 under the mattress of the bed in the master bedroom. After retaining private counsel, Thompson told the court he believed his lawyer was helping the State and ultimately chose to represent himself. The court managed to convince Thompson to allow a court-appointed attorney to participate in an advisory role at trial.

HELD: A defendant may not waive assistance of counsel, represent himself at trial, and then claim he was denied assistance of counsel on a motion for a new trial or appeal. When a criminal defendant insists on representing himself, a circuit court must inform that defendant of his rights in accordance with the requirements of Rule 8.05. The circuit court not only met the requirements of Rule 8.05, but it far surpassed them.

==>The trial judge did not err in allowing an officer to testify about the prior buy at Thompson's house. Thompson objected to the testimony based on relevance at trial, but claims a hearsay violation on appeal. Therefore, the issue is barred. It is also not plain error. The testimony was offered to show how Thompson came under investigation. Even if error, it was harmless due to the overwhelming weight of the evidence.

==>Thompson claimed that the ADA who was prosecuting his case was present during the search of his house. Thompson argued that he should recuse himself from prosecuting his case. The judge did not allow this, so Thompson sought to call the ADA as a witness. The trial judge did not err in refusing to allow this. The ADA consistently stated that he was only there to provide legal advice on any potential issues that may have arisen during the search, and he did not recommend that anyone be arrested. This did not violate Thompson's right to confront witnesses.

==>The verdict was not against the weight of the evidence. The drugs were found inside

Thompson's home and in his clothing. His home was also within 1,500 feet of a church.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62582.pdf>

Porter v. State, No. 2009-KA-00657-COA (Miss.App. April 27, 2010)

CRIME: Murder and Simple Assault

SENTENCE: Life plus 6 months without parole as an habitual

COURT: Bolivar County Circuit Court

TRIAL JUDGE: Hon. Albert B. Smith, III

APPELLANT ATTORNEY: George Holmes

APPELLEE ATTORNEY: Billy L. Gore

DISTRICT ATTORNEY: Brenda Fay Mitchell

DISPOSITION: Affirmed

Roberts, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Maxwell, JJ., Concur.

ISSUE: Whether the evidence was insufficient to sustain his convictions for murder and simple assault. Porter claims he is guilty, at most, of manslaughter.

FACTS: On April 7, 2007, Robert Porter went to a club in Choctaw, MS described as both "Clea's Place" and "the L.A. Connection." Once inside, Porter saw that his estranged wife, Rosemary Porter, and a male friend, Terry Moore, were sitting together. Rosemary testified that Porter walked up to the table and said, "[d]idn't I tell you, both of you, if I had caught y'all together I would kill both of you" Terry's nephew, who was also at the table corroborated Rosemary's testimony regarding the substance of Porter's statement. Porter then left the club and returned a short time later. According to Rosemary, upon re-entering the club, Porter walked up to their table and stabbed Terry once. Terry never moved before Porter stabbed him. Porter claimed that he thought Terry was going to attack him. Porter also attacked Rosemary after he had stabbed Terry. Rosemary testified Porter said, "I'm going to kill your M.F. butt, too" and tried to cut her with the knife. Porter then ran out of the club. Rosemary had a wound on her arm, but she did not receive medical attention. She later testified that Porter had cut her with a knife. However, Porter claimed that he had merely grabbed Rosemary and that his fingernail caused the wound on her arm. Porter was later found at a gas station sleeping inside his car. Police stated he was "highly intoxicated." Porter asked if Terry was dead. Upon finding out he was, Porter stated, "it served the son of a b---- right," and "it was too bad he didn't kill the b----, too."

HELD: Porter's claim that the court erred in failing to grant his JNOV motion is procedurally barred. Porter's JNOV motion only made a generalized argument that a JNOV was appropriate. He did not specify what he considered to be a deficiency in the proof, or what elements of which charge that he considered to have been insufficiently demonstrated. Porter's motion was overly generalized and is accordingly barred.

==> “Porter's generic and conclusory argument that a JNOV was appropriate does not rise to the standard of specificity. It is no great challenge to argue something more than a generic argument. Simply stating that there was insufficient evidence of premeditation and then highlighting the deficiency with portions of the testimony would suffice.”

==> Regardless, the record contradicted Porter’s claim of self-defense. Porter approached Rosemary and Terry. They did not approach him. Rosemary testified that Porter entered the club, spoke to them, left the club, re-entered, and immediately walked up to Terry and stabbed him without any provocation. The jury was also within its discretion in finding Porter less credible than other witnesses.

==> Although charged with aggravated assault, the jury found Porter guilty of simple assault regarding the wound to Rosemary. Rosemary testified that Porter attacked her with a knife after he had stabbed Terry. Porter said, "I'm going to kill your M.F. butt, too" as he tried to cut her. Porter testified that he merely grabbed Rosemary, and one of his long fingernails cut into her arm. The jury saw a photograph of Rosemary's bleeding left arm. The evidence was sufficient.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62443.pdf>

Also of Note:

Taylor v. David Petrie and Mississippi Department of Corrections, No. 2009-CP-00073-COA (Miss.App. April 27, 2010)

CRIME: Civil

COURT: Sunflower County Circuit Court

TRIAL JUDGE: Hon. W. Ashley Hines

APPELLANT ATTORNEY: Pro Se

APPELLEE ATTORNEY: Jane L. Mapp

DISPOSITION: Petition Dismissed

Irving, J., for the Court: King, C.J., Lee and Myers, P.JJ., Griffis, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

ISSUES: (1) he was prevented from exhausting his MDOC administrative remedies; (2) he stated a claim upon which relief could have been granted; (3) he was denied his right to appeal a September order that stayed proceedings; (4) the MDOC retaliated against him for attempting to litigate his grievances; (5) he was denied access to the courts to litigate his grievances; (6) he was denied his right to appeal and seek judicial review of a rule-violation report (RVR); (7) he should have been granted summary judgment; and (8) the circuit judge should have recused himself from Taylor's case.

FACTS: Taylor is currently incarcerated at the Mississippi State Penitentiary. On July 15, 2008, Taylor filed a motion to show cause with the circuit court, in which he claimed that the MDOC had violated several of his rights. The circuit court denied relief and Taylor appealed.

HELD: It is apparent from the record that Taylor has not properly utilized the sensitive-issue procedures that are allowed by the MDOC. Taylor made no statement as to why most of his complaints had to be filed as sensitive issues.

==>Taylor also contends that he timely submitted his third-step grievance filing regarding his sexual-harassment claim but that the prison officials did not timely mail the documents. However, there is no authority to apply the prison-mailbox rule to internal MDOC administrative remedies. Taylor's filing was untimely.

==>The circuit court did not err in concluding that Taylor failed to exhaust his administrative remedies.

==>Taylor did not have the right to appeal a 90 day stay issued by the circuit court to allow him to exhaust his administrative options. Such an appeal would have been an interlocutory appeal which Taylor did not have permission to file.

==>Any claim regarding retaliation has not been administratively exhausted and is therefore, not subject to judicial review.

==>Taylor has presented no evidence to show that prison staff prevented him from timely filing his third-step complaint regarding his sexual-harassment claim.

==>Taylor complains that he was denied his right to appeal an RVR that was filed against him. Taylor has failed to provide any evidence showing that the MDOC staff interfered with his ability to pursue his administrative remedies regarding this complaint.

==>Taylor is not entitled to summary judgment due to his failure to exhaust his administrative remedies.

==>The trial judge did not err in failing to recuse himself. Taylor's claims appear to be based on the fact that Judge Hines had denied several of Taylor's motions in the course of the proceedings. There was no evidence that the judge was biased or was otherwise unfit to preside over the case.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDLList/..%5COpinions%5CCO62635.pdf>

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